

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES**

In the Matter of the Revocation of the License of  
Margaret Nutall  
3318 Thomas Avenue North  
Minneapolis, Minnesota 55412  
to provide child foster care under  
Minnesota Rules parts 9545.5105 to 9545.0445

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

Administrative Law Judge Allan W. Klein conducted a hearing in this contested case proceeding beginning at 9:30 a.m. on May 10, 2000, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. The record closed at the end of the hearing.

Vicki Vial-Taylor, Assistant Hennepin County Attorney, 1210 Health Services Building, 525 Portland Avenue, Minneapolis, Minnesota 55414, appeared at the hearing as attorney for Hennepin County (County) and the Minnesota Department of Human Services (DHS). Margaret Nutall, 3318 Thomas Avenue North, Minneapolis, Minnesota 55412, was not represented by an attorney but rather appeared at the hearing on her own behalf.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Human Services will make the final decision after reviewing the administrative record. The Commissioner may adopt, reject or modify the contents of this Report. Under Minnesota law,<sup>1</sup> the Commissioner may not make his final decision until after the parties have had access to this Report for at least ten days. During that time, the Commissioner must give each party adversely affected by this Report an opportunity to file exceptions and present argument to him. Parties should contact the office of Michael O'Keefe, Commissioner of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155, to find out how to file exceptions or present argument.

**STATEMENT OF ISSUE**

Whether the Commissioner should revoke Ms. Nutall's license to provide child foster care because her husband who lives with her became disqualified because, based on a preponderance of the evidence, he committed crimes.

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<sup>1</sup> Minnesota Statutes, section 14.61 (1998). (Unless otherwise specified, citations to Minnesota Statutes refer to the 1998 edition.)

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On December 11, 1998, an interim license to provide child foster care for two children was issued to Ms. Nutall.<sup>2</sup>

2. On about March 16, 1999, Ms. Nutall's estranged husband, Leman Nutall, returned to her residence. Minnesota law requires that a background study be conducted by DHS on all individuals over the age of thirteen living in the household where the foster care home program is provided.<sup>3</sup> The law also requires that a background study be conducted on any employee, contractor, or volunteer who will have direct contact with persons served by the foster care program.<sup>4</sup> On about March 16, 1999, a background study was initiated on Mr. Nutall.<sup>5</sup>

3. The background study on Mr. Nutall revealed that, based on a preponderance of the evidence, he committed acts on July 24, 1992, and August 31, 1994, that meet the definition of domestic assault under Minnesota law.<sup>6</sup>

4. In a letter dated June 16, 1999, the County informed Mr. Nutall that a background study had been performed and that the study indicated that Mr. Nutall was disqualified.<sup>7</sup> The letter informed Mr. Nutall that he could request reconsideration of the disqualification and provided forms he could use to request a reconsideration. In a letter also dated June 16, 1999, the County informed Ms. Nutall that a background study was initiated on Mr. Nutall, but that more time was needed to complete the study.<sup>8</sup>

5. Mr. Nutall filled out the request for reconsideration forms and returned them to the County.<sup>9</sup> The request for reconsideration was forwarded to the Department of Human Services for review.<sup>10</sup>

6. In a letter dated November 2, 1999, DHS informed Mr. Nutall that his request for reconsideration of the disqualification decision was not set aside, nor did DHS grant a variance. The letter stated that the information Mr. Nutall provided in his request did not demonstrate that information relied on to make the

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<sup>2</sup> Exhibit 8.

<sup>3</sup> Minnesota Statutes, section 245A.04, subdivision 3 (c)(2).

<sup>4</sup> Minnesota Statutes, section 245A.04, subdivision 3 (c)(3) and (4).

<sup>5</sup> Exhibit 8.

<sup>6</sup> Minnesota Statutes, section 609.224.

<sup>7</sup> Exhibit 1.

<sup>8</sup> Exhibit 2.

<sup>9</sup> Exhibits 3 and 4.

<sup>10</sup> Exhibit 6.

disqualification decision was incorrect. The letter also stated that Mr. Nutall failed to submit information demonstrating that he did not pose a risk of harm to any person served by the foster care program.<sup>11</sup> In a letter also dated November 2, 1999, DHS informed Ms. Nutall that Mr. Nutall's disqualification was not set aside and that DHS did not grant a variance.<sup>12</sup>

7. By letter dated January 24, 2000, DHS ordered revocation of Ms. Nutall's foster care license.<sup>13</sup> DHS stated that her license was revoked because Leman Nutall, a member of Margaret Nutall's household, was disqualified from direct contact with persons served by the child foster care program. Because Mr. Nutall was disqualified, Ms. Nutall's child foster care license was being revoked.<sup>14</sup> Ms. Nutall appealed DHS's decision to revoke her license and requested a contested case hearing under Minnesota law.<sup>15</sup>

8. The Administrative Law Judge adopts as Findings of Fact any Conclusions of Law that are more appropriately described as Findings.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. Minnesota law<sup>16</sup> gives the Administrative Law Judge and the Commissioner of Human Services authority to consider and rule on the issues in this contested case proceeding.

2. The Notice of and Order for Hearing was proper in all respects, and the County and DHS have complied with all of the law's other substantive and procedural requirements.

3. Minnesota law<sup>17</sup> establishes the parties' burden of proof and of producing evidence in proceedings to appeal revocations of family foster care licenses:

[T]he commissioner may demonstrate reasonable cause of action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the commissioner demonstrates that reasonable cause existed, the burden of proof in hearings . . . shifts to the license holder to demonstrate by a preponderance of the

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<sup>11</sup> Exhibit 6.

<sup>12</sup> Exhibit 7.

<sup>13</sup> Exhibit 9.

<sup>14</sup> Exhibit 9.

<sup>15</sup> Exhibit 10.

<sup>16</sup> Minnesota Statutes, section 14.50, 14.57, 14.69, and 245A.01 through 245A.16.

<sup>17</sup> Minnesota Statutes, section 245A.08, subdivision 3(a).

evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder violated, at the time that the commissioner alleges the violations of law or rules occurred.

4. Minnesota law<sup>18</sup> specifies that no individual having a disqualification may be retained in a position involving direct contact with the persons served by the program. Moreover, program rules<sup>19</sup> state that if a person is disqualified, the disqualification is considered a violation and is grounds for license revocation.

5. Minnesota law also states that a final decision of the Commissioner concerning whether to disqualify an individual, as well as a decision whether to grant a variance, is not subject to further review in a contested case hearing involving a negative licensing appeal taken in response to a disqualification.<sup>20</sup>

6. The Commissioner demonstrated reasonable cause for revoking Ms. Nutall's license based on his earlier decision to disqualify Mr. Nutall. Under Minnesota law, Ms. Nutall then had the burden of proof to demonstrate, by a preponderance of the evidence, that she has complied fully with the statutes and rules that apply to the child foster care program. But because of the existing decision concluding that Mr. Nutall is disqualified because he committed acts that met the definition of domestic assault, Ms. Nutall has failed to meet that burden of proof. DHS, therefore, was justified in revoking her child foster care license.

7. The Administrative Law Judge adopts as Conclusions of Law and Findings of Fact that are more appropriately described as Conclusions.

8. The Memorandum that follows explains the reasons for these Conclusions, and the Administrative Law Judge therefore incorporates that Memorandum into these Conclusions.

Based upon the Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

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<sup>18</sup> Minnesota Statutes, section 245A.04, subdivision 3d.

<sup>19</sup> Minnesota Rules, parts 9543.0100, subpart 3, item B; and 9543.1060, subpart 4, item B.

<sup>20</sup> Minnesota Statutes, section 245A.04, subdivision 3b (e).

### **RECOMMENDATION**

The Administrative Law Judge therefore respectfully recommends that Ms. Nutall's license to provide child foster care be revoked because she violated Minnesota Rules, part 9543.3060, subpart 1 B.

Dated this 16<sup>th</sup> day of May, 2000.

/s/ Allan W. Klein  
ALLAN W. KLEIN  
Administrative Law Judge

Reported: Tape recorded (one tape); No Transcript Prepared.

### **NOTICE**

Under Minnesota law,<sup>21</sup> the Commissioner of Human Services is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail.

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<sup>21</sup> Minnesota Statutes, section 14.62, subdivision 1.

## MEMORANDUM

DHS revoked Ms. Nutall's license to provide child foster care because the County found, by a preponderance of the evidence, that Leman Nutall, a member of Ms. Nutall's household, committed acts that meet the definition of domestic assault. Mr. Nutall requested reconsideration of the disqualification, but DHS ultimately upheld the disqualification and did not grant a variance.

At the contested case hearing, Ms. Nutall testified that Mr. Nutall was a good father and that the incidents from which the disqualifications arose were isolated and that both domestic assault charges were eventually dismissed. The Administrative Law Judge, however, cannot consider the factual history in this contested case proceeding. The decision by the Commissioner to disqualify Mr. Nutall is a final decision and is not subject to further review in a negative licensing appeal taken in response to the disqualification.<sup>22</sup>

Because Mr. Nutall resides in a licensee's household, he was subject to a background study. Mr. Nutall was disqualified because, based on a preponderance of the evidence, he committed domestic assault. This disqualification, in turn, is grounds for revoking Margaret Nutall's child foster care license. Ms. Nutall, therefore, failed to meet her burden of proof to demonstrate, by a preponderance of the evidence, that she has complied fully with the statutes and rules that apply to the child foster care program.

A.W.K.

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<sup>22</sup> Minnesota Statutes, section 245A.04, subdivision 3b (e).